

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

THE SHOE SHOW OF ROCKY MOUNT,  
INC.,

Plaintiff,

v.

JANET KLIMCZAK, ET AL.,

Defendants.

CIVIL ACTION NO. 3:06-CV-1740

(JUDGE CAPUTO)

**MEMORANDUM**

Before me is Plaintiff's Motion to Remand. (Doc. 2) The motion alleges that the Court has no jurisdiction because the amount in controversy does not exceed \$75,000. The Defendants assert in their Notice of Removal, (Doc. 1) that the amount in controversy exceeds \$80,000.00, however defendants presented no extrinsic evidence that the amount in controversy exceeds \$75,000.00 as required by 28 U.S.C. § 1332.

Because Defendants have not met their burden to establish that jurisdiction exists by a preponderance of the evidence, see *Bassett v. Kia Motors America, Inc.*, 357 F.3d 392, 397 (3d Cir. 2004), the motion will be granted.

**DISCUSSION**

Federal courts are courts of limited jurisdiction, and "in order to carry out the Congressional intent to limit jurisdiction in diversity cases, doubts must be resolved in favor of remand." *Id.* at 403 (citing cases). The burden is upon the defendant in a removal case to establish to a legal certainty that there is federal jurisdiction when the relevant facts are not in dispute. *Id.* at 398. When there are disputes over factual matters, the preponderance

of the evidence standard is “appropriate.” *Id.*

A component of the analysis in determining whether jurisdiction exists in a removal case is that courts decide the amount in controversy from the complaint. 989 F.2d at 145 (citing *Horton v. Liberty Mut. Ins. Co.*, 367 U.S. 348, 353, 81 S.Ct. 1570, 1573 (1961)). Here the complaint contains two counts, one for malicious prosecution and one for civil conspiracy. Neither count seeks damages in a discrete amount, and it is speculation to try to determine an amount in controversy by a review of the contents of the Complaint. The mere assertion that the amount in controversy exceeds \$80,000.00 does not meet the defendants burden of establishing jurisdiction by a preponderance of evidence. The motion for remand will therefore be granted.

An appropriate order follows.

October 18, 2006  
Date

/s/ A. Richard Caputo  
A. Richard Caputo  
United States District Judge

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**ORDER**

**NOW**, this 18th day of October, 2006, **IT IS HEREBY ORDERED** that Plaintiff's Motion to Remand (Doc. 2) is GRANTED. This case is remanded to the Court of Common Pleas of Lackawanna County.

/s/ A. Richard Caputo  
A. Richard Caputo  
United States District Judge